

Attorney Docket No. 5577-230
Application Serial No. 09/833,925
Filed: April 12, 2001
Page 11

REMARKS

Applicants appreciate the Office Action of July 7, 2005. Applicants have amended Claim 1 to include the recitations of dependent Claim 7 and have cancelled Claim 7 from the present application. Applicants have also amended Claims 30 and 32 to include recitations similar to those of Claim 7. Accordingly, Applicants respectfully submit that the pending claims are patentable over the cited references for at least the reasons discussed herein. Accordingly, allowance of the pending claims is respectfully requested in due course.

The Section 102 Rejections

A. Independent Claims 1, 30 and 32 are Patentable over Abjanic

Claims 1-12, 16-26 and 30-33 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,732,175 to Abjanic (hereinafter Abjanic). See Office Action, page 2. Applicants respectfully submit that many of the recitations of the pending claims are neither disclosed nor suggested by Abjanic. For example, Amended Claim 1 recites:

A method of distributing workload between a plurality of servers, the method comprising:
receiving a plurality of requests over a first connection;
parsing the plurality of requests to determine application layer information associated with each of the plurality of requests;
selecting destination servers for corresponding ones of the plurality of requests based on the determined application layer information associated with each of the plurality of requests; and
distributing the plurality of requests to the corresponding selected destination servers over a plurality of second connections associated with respective ones of the destination servers, wherein selecting destination servers for corresponding ones of the plurality of requests comprises:
determining if the determined application layer information associated with each of the plurality of requests is relevant application layer information;
selecting one of a subset of the destination servers if the application layer information associated with each of the plurality of requests is relevant application layer information; and
selecting a destination server other than a destination server in the subset of the destination servers if the application layer information associated with each of the plurality of requests is not relevant application layer information.

Attorney Docket No. 5577-230
Application Serial No. 09/833,925
Filed: April 12, 2001
Page 12

Claims 30 and 32 contain corresponding system and computer program product recitations, respectively. Applicants respectfully submit that at least the highlighted recitations of, for example, Claim 1 are neither disclosed nor suggested by the Abjanic.

Applicants have amended Claim 1 to include the recitations of dependent Claim 7, which has been canceled from the present application. The Office Action points to the following portion of Abjanic as teaching the highlighted recitations of Claim 1, which were originally included in dependent Claim 7:

According to an embodiment, the configuration patterns may be dynamically changed or updated by a user or by a program or application. For example, a program may detect the failure of one or more servers and/or detect the response time of servers, and then update the configuration pattern to account for these changes in the network (e.g., redirect certain messages from busy servers to servers which are less busy, or from servers which have failed to the available servers).

See Abjanic, column 6, lines 54-62 (emphasis added). In other words, the cited portion of Abjanic discusses redirecting messages from busy servers to less busy servers. In contrast, amended Claim 1 recites "selecting one of a subset of the destination servers if the application layer information associated with each of the plurality of requests is relevant application layer information and selecting a destination server other than a destination server in the subset of the destination servers if the application layer information associated with each of the plurality of requests is not relevant application layer information." Nothing in the cited portion of Abjanic discloses or suggests a subset of servers as recited in Amended Claim 1.

Accordingly, Applicants respectfully submit that amended independent Claims 1, 30 and 32 and the claims that depend therefrom are patentable over Abjanic for at least the reasons discussed herein. Furthermore, the dependent claims are patentable at least per the patentability of the independent base claims from which they depend.

B. Independent Claim 16, 31 and 33 are Patentable over Abjanic

Independent Claim 16 recites, in part, "defining a subset of the plurality of servers which are to receive HTTP requests having an indication of high priority." Claims 31 and 33 contain corresponding system and computer program product recitations, respectively. The Office Action points to the following portion of Abjanic as teaching this recitation of independent

Attorney Docket No. 5577-230
Application Serial No. 09/833,925
Filed: April 12, 2001
Page 13

Claim 16:

At block 225, if there is a match between the content of the application data (e.g., the business transaction information which may be provided as XML data) of a message and a configuration pattern or query, then the director 145 directs or switches the message to the corresponding server (or processing node) in the data center (e.g., directed to the specific server as indicated by the configuration pattern). If there are multiple matches, the director 145 can just direct the message based to the first match, or a load balancing policy can be used to balance messages among a group of servers. If there is no match, the message can be directed to a default server or can be blocked. Alternatively, the configuration pattern can also identify a certain pattern for which a message should be blocked from being forwarded. In this respect, the director 145 may also act as a filter to selectively pass or forward some messages while blocking others, based upon the application data.

See Abjanic, column 6, line 63 to column 7, line 12. In other words, Abjanic discusses matches between content and configuration patterns. In contrast, Claim 16 recites a specific subset of servers that have been set aside to process requests having an indication of high priority. Nothing in Abjanic discloses or suggests the cited recitations of Claim 16.

Accordingly, Applicants respectfully submit that amended independent Claims 16, 31 and 33 and the claims that depend therefrom are patentable over Abjanic for at least the reasons discussed herein. Furthermore, the dependent claims are patentable at least per the patentability of the independent base claims from which they depend.

C. Many of the Dependent Claims are Separately Patentable

As discussed above, the dependent claims are patentable at least per the patentability of the independent claims from which they depend. Many of the dependent claims are also separately patentable.

For example, Claim 8:

A method of Claim 1, wherein selecting one of a subset of the destination servers if the application layer information associated with each of the plurality of requests is relevant application layer information, further comprises:

determining a load associated with respective destination servers in the subset of destination servers; and

selecting the destination server in the subset of the destination servers based on the determined load.

Attorney Docket No. 5577-230
Application Serial No. 09/833,925
Filed: April 12, 2001
Page 14

Claim 19 contains similar recitations. As discussed above, nothing in Abjanic discloses or suggests a subset of destination servers. Thus, it follows that nothing in Abjanic discloses or suggests the details of the subsets of destination servers as recited in Claim 8. Accordingly, dependent Claims 8 and 19 are separately patentable over the cited references for at least these additional reasons.

By way of further example, Claim 9 recites:

A method of Claim 1, wherein the subset of destination servers includes at least one server which is to receive requests having an indication of high priority, and wherein the indication of high priority is determined based on the existence and nonexistence of relevant application layer information.

Claim 20 contains similar recitations. As discussed above, nothing in Abjanic discloses or suggests a subset of destination servers. Thus, it follows that nothing in Abjanic discloses or suggests the details of the subsets of destination servers as recited in Claim 9. Accordingly, dependent Claims 9 and 20 are separately patentable over the cited references for at least these additional reasons.

By way of further example, Claim 10 recites:

A method according to Claim 1, wherein distributing the plurality of requests comprises:

determining if a second connection associated with a selected destination servers exists;

establishing the second connection to the selected destination server if the second connection does not exist;

distributing a request to the selected destination servers over the second connection; and

repeating the determining, establishing and distributing for each of the plurality of requests.

Claim 24 contains similar recitations. Applicants respectfully submit that at least the highlighted portions of Claim 10 are neither disclosed nor suggested by the cited portion of Abjanic. In particular, the Office Action points to the following portions of Abjanic as teaching the highlighted recitations of Claim 10 (*See* Office Action, page 6):

At block 225, if there is a match between the content of the application data (e.g., the business transaction information which may be provided as XML data) of a message and a configuration pattern or query, then the director 145 directs or switches the message to the corresponding server (or processing node) in the data center (e.g.,

Attorney Docket No. 5577-230
Application Serial No. 09/833,925
Filed: April 12, 2001
Page 15

directed to the specific server as indicated by the configuration pattern). If there are multiple matches, the director 145 can just direct the message based to the first match, or a load balancing policy can be used to balance messages among a group of servers. If there is no match, the message can be directed to a default server or can be blocked. Alternatively, the configuration pattern can also identify a certain pattern for which a message should be blocked from being forwarded. In this respect, the director 145 may also act as a filter to selectively pass or forward some messages while blocking others, based upon the application data. . . .

Thus, for those messages which do not include XML data (and thus cannot be switched or directed by director 145A), director 145A will add unnecessary latency in the message forwarding path in the absence of block 310. On the other hand, where a significant percentage of the messages received by director 145A include XML data, block 310 may be considered unnecessary and may be omitted (because block 310 would typically add unnecessary latency in such case).

See Abjanic, column 6, line 63 to column 7, line 15 and column 8, lines 44-52. Nothing in the cited portion of Abjanic discloses or suggests the highlighted recitations of Claim 10.

Accordingly, Applicants respectfully submit that Claims 10 and 24 are separately patentable over Abjanic for at least these additional reasons.

The Section 103 Rejections

Claims 13-15 and 27-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Abjanic in view of *Efficient Support for P-HTTP in Cluster-Based Web Servers* by Mohit Aron *et al.* (hereinafter "Aron"). As discussed above, the dependent claims are patentable over the cited references at least per the patentability of the independent base claims from which they depend. However, many of the dependent claims are also separately patentable for at least the reasons stated herein.

In particular, the Office Action admits that Abjanic fails to disclose or suggest all of the recitations of Claims 13-15 and 27-29. See Office Action, pages 10-11. However, the Office Action points to Aron as providing the missing teachings. However, the Office Action does not provide a motivation or suggestion to combine the cited references as suggested in the Office Action. As affirmed by the Court of Appeals for the Federal Circuit in *In re Sang-su Lee*, a factual question of motivation is material to patentability, **and cannot be resolved on subjective belief and unknown authority.** See *In re Sang-su Lee*, 277 F.3d 1338 (Fed. Cir. 2002). It is

Attorney Docket No. 5577-230
Application Serial No. 09/833,925
Filed: April 12, 2001
Page 16

improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983). Thus, it appears that the Office Action gains its alleged impetus or suggestion to combine the cited references by hindsight reasoning informed by Applicants' disclosure, which, as noted above, is an inappropriate basis for combining references. Accordingly, Applicants respectfully submit that dependent Claims 13-15 and 27-29 are separately patentable over the cited combination for at least these additional reasons.

CONCLUSION

Applicants respectfully submit that pending claims are in condition for allowance for at least the reasons discussed above. Thus, allowance of the pending claims is respectfully requested in due course. Favorable examination and allowance of the present application is respectfully requested.

Respectfully submitted,



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